

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 24**

PUERTO RICO TELEPHONE COMPANY, INC.

Employer

and

HERMANDAD INDEPENDIENTE DE
EMPLEADOS TELEFÓNICOS, INC.

Petitioner

Case 24-UC-226

DECISION AND ORDER DISMISSING PETITION

Upon a petition duly filed under Section 9 (c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board.

Pursuant to the provisions of Section 3 (b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned makes the following findings and conclusions¹:

I. ISSUES

The Petitioner seeks to clarify an existing unit of professional and technical employees by including the classifications of Credit Handling Officer (CHO) and Price and Product Specialist (PPS). The Employer requests the dismissal of the petition on the following grounds: (1) the classifications have been historically excluded from the unit; (2) the CHO position has existed at Puerto Rico Telephone Company ("PRT") since 2002, therefore it is not a newly

¹Upon the entire record in this proceeding, the undersigned finds:

- a. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
- b. During the past calendar year, the Employer, a local and long distance provider as well as a data transmission services provider in Puerto Rico, derived gross earnings in excess of \$100,000. Accordingly, I find that it is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

created position nor one that has undergone substantial change since its creation; (3) the PPS position has existed at PRT since 2000, and therefore is not a newly created position; (4) the CHO and PPS positions are managerial positions, and (5) the CHO and PPS positions do not share sufficient terms and conditions of employment with other unit employees. The Union disputes the Employer's assertions arguing that the motion to dismiss should be denied.

II. DECISION

For the reasons discussed below, including the lack of evidence that the positions in issue share a community of interest with unit employees, it is concluded that the unit shall not be clarified to include the Credit Handler Officer and the Price and Products Specialist positions, and accordingly, the Petition shall be dismissed.

III. GENERAL STATEMENT OF FACTS

The Employer, a local and long distance telephone service and data transmission services provider in Puerto Rico, employs approximately 1546 professional and technical employees that have been represented by the Petitioner since 1995. The extant collective bargaining agreement covering the unit employees expires by its terms on December 31, 2008. This collective bargaining agreement was negotiated during the period of August 19, 2003 to March 30, 2004. Prior to the extant agreement, the previous agreement was in effect from October 23, 1999 to October 22, 2003².

IV. STATEMENT OF FACTS

1. **The Credit Handling Officials**

The five Credit Handling Officers are currently employed in the Treatment and Collections Department. Two CHOs are assigned to work with business clients and report to the Business Treatment and Collections Manager, while the other three CHOs work with government accounts and report to the Government Treatment and Collections Manager. The five CHOs perform the same tasks and have the same duties and responsibilities. The CHO acts as a link officer between the Employer and business and government consumers with high consumption, to assure that they receive assistance in the solution of billing issues. The CHO is responsible for the preparation of payment plans for clients with outstanding balances, and assists the manager of the division designing strategic plans related to the collection of money owed. The CHO evaluates the process and operational results of credit handling areas, and makes sure that short and long term action plans are consistent with the established collection objectives.

²The first collective bargaining agreement between the parties was in effect from October 23, 1996 to October 22, 1999.

The record reflects that the CHO assigns work to the Customer Service Representatives, which are unit employees. Once the work is assigned and distributed, the CHO meets with them to design a working plan and a specific collection strategy. Afterwards, the CHO does follow up with weekly meetings. The CHO creates payment plans for clients which fall outside of the parameters established by the Employer regarding collections. In doing so, the CHO does not seek his or her manager's approval.

The record shows that the CHO has attended management meetings. In particular the CHO attends, with the Department Manager and Director, weekly meetings regarding the invoice consolidation project in which the CHO takes part. The CHO is responsible for identifying high volume clients, and sending them a letter explaining the project, so that the Employer could obtain written authorization to consolidate invoices. Union members do not attend these meetings. The CHO also takes part in special managerial projects, such as the disconnection of special process lines. The record showed an occasion when a CHO suggested a procedure in which special service lines that transmit data be disconnected if a client has a high outstanding balance. Based on the CHO's suggestion, the Employer was able to establish a disconnection procedure. A new procedure was implemented, new software designed, and in order to facilitate the implementation process, the CHO met with other departments and requested training for service representatives, who would ultimately be responsible for the disconnection. In particular, the record reflects that the CHO suggested the implementation of a disconnection process for data lines which included the analysis of the financial impact of the procedure.

Three or more times a week, the CHO visits clients to clarify doubts or potential claims raised by the Employer services invoice. At the end of each month, the CHO presents to the Department Manager a report listing the annotations, disconnections, billing errors found and the recommendations for credit that he had worked on during the month. A daily log is kept of the clients' visits, and those visits that are controversial or involve considerable amounts of money are reported to the Department Manager. The Employer has trained the CHO in how to motivate personnel and leadership training, work plan and objectives preparation. These trainings are also attended by supervisors and Department Directors.

The Petitioner argues that these duties and responsibilities are identical to those performed by the Final Accounts Coordinator position, a classification which belongs to the bargaining unit. The employees in this classification work in the Credit and Collections Department and their immediate supervisor is Carlos Rodríguez. The Final Accounts Coordinator receives a list of outstanding disconnected accounts and picks the ones he thinks are more likely to submit payment. Those accounts that are not chosen or in which his efforts fail and/or are over 90 days overdue are referred to a collections agency. The Final

Account Coordinators, contrary to the CHO, do not assign work to the Service Representatives, do not prepare work plans for other employees, and do not participate in managerial projects and meetings. These two classifications do not have comparable salaries and are not at the same professional grade level. The Final Account Coordinators are paid by salary scales 8 and 10 as established in the Collective Bargaining Agreement³. Regarding the similarity of duties between the two classifications, the record reflects that in one occasion, during the month of October of 2004, Gil Figueroa, Final Accounts Coordinator found out that a CHO was also involved in working the same Puerto Rico Power Authority account he was handling. Although the Petitioner suggested that the CHO and Final Account Coordinator share the same duties, the record reflects that the similarities between the two classifications are limited to making collection efforts on past due accounts and reaching agreements with the clients regarding the amount owed. The CHOs' collection efforts are aimed at collections of live or active accounts, while the FAC collection efforts are restricted to those accounts which have been disconnected.

The record reflects that the CHO does not have a fixed work shift, and often works after business hours. They are not required to clock in or sign in. Their salary is at the managerial aqua scale. The CHO spends about eight to nine hours a week visiting clients outside the office. They are not paid overtime, and their work benefits include 30 days' paid vacation, medical and dental health plan and life insurance. In addition, the CHO has the same retirement plan as the Managers. Salary increases are based on years of experience and performance.

The record reflects that both the Final Account Coordinator and the CHO offices are located at the second floor of the Barrio Palmas, Cataño, Puerto Rico building. Notwithstanding, the record reflects that the Final Accounts Coordinator and CHO do not share common supervision, and do not have daily contact or interaction. Unlike the CHOs, the Final Accounts Coordinators have to notify their supervisor whenever they are going to be absent from their work area, and have to codify in the Rockwell System any absence from their desk.

With regards to the timeliness of the instant Petition, the record reflects that the CHO classification was created by the Employer in or about October 2002 and that the Petitioner became aware of its existence in or about March 17, 2003, when it requested the CHO job description⁴. Between August 19, 2003 and March 30, 2004, the parties negotiated a collective bargaining agreement that was signed on April 15, 2004 and became effective January 1, 2004 to

³ Final Accounts Coordinator's salary ranges between \$13,500 (level 8 minimum), and \$17,600 (level 10 minimum).

⁴ Union Treasurer José Kortright testified that the Union first learned of the CHO and PPS classifications when it received both job descriptions from an anonymous source on May 8, 2003. However, the record shows that on March 17, 2003 the Union sent a letter to José R. Ponce, Labor Relations Manager for PRT. In said letter, which included the job posting number, Kortright requested the CHO job description in order to evaluate the CHO position.

December 31, 2008. The record also reflects that on August 26, 2003 the Petitioner requested to include this classification in the bargaining unit during the negotiations for the last collective bargaining agreement. The record reflects that although the Petitioner agreed to a collective bargaining agreement on April 15, 2004 that did not include the CHO position, it did so without waiving its right to represent this classification. The record reflects that on September 18, 2003 Petitioner withdrew the position list it had included as part of its contract proposal for Article 2 unit description, and it notified the Employer in writing that it was reserving its right to claim its representation in the appropriate forum. The instant Petition was filed on September 24, 2004. Afterwards, on September 27, 2004, Petitioner requested the number of employees occupying the CHO classification, request which the Employer complied with on October 4, 2004, stating that three people occupied the CHO classification. The record shows that the next communication between the Union and PRT related to the CHO classification was in February 14, 2005⁵, requesting the CHO classification description of duties.

2. The Price and Product Specialist Position

The record reflects that a classification called Price Specialist was created by the Employer in or about July, 2000. PRT Employee Glenda Gaetán, a witness for the Employer, stated that she worked as a Classification official starting on September 1, 1998 until March 25, 2002. Her duties included creating, modifying, updating or eliminating job descriptions. She also worked with job compensations and planning human resources for the Employer. She stated that the Price Specialist classification was created in July 2000, and was posted at Employer's bulletin boards from December 12, 2000 until December 18, 2000. The record shows that, from September 15, 1999 to October 18, 2000, the Petitioner negotiated two collective bargaining agreements with PRT and the newly incorporated Verizon, respectively. Both agreements were in effect from October 23, 1999 to October 22, 2003.

The Price Specialist classification became Price and Product Specialist (PPS) on or about January 16, 2002. According to Gaetán, the position's name was changed from Price Specialist to PPS, and the classification's job description was updated to conform to Verizon's⁶ requirements. A comparison between both

⁵In its Brief, Petitioner argues that the Union requested the CHO and PPS job descriptions on February 14, 2004, but the record shows that the correct year is 2005.

⁶I take administrative notice that in 1995, the Employer was part of the Puerto Rico Telephone Company (PRT) a Commonwealth-owned telecommunications company. The unit was originally certified by the Puerto Rico Labor Board in 1995. In 1996, after the enactment by the U.S. Congress of the Federal Telecommunications Act of 1996, 47 U.S.C. §§151 et. seq., PRT separated its wireless division from the company and organized it as a separate corporation. In 1999 both wireless and line communications companies were privatized by the Commonwealth of Puerto Rico and sold to GTE. On June 30, 2000, GTE acquired Bell Atlantic Corporation and consolidated its wireless operations into one wireless company known as Verizon. See Regional Directors' Decision on Case 24-UC-221.

job descriptions shows that they are essentially identical, except that a section on the Nature of Work and two essential functions were added to the PPS classification's job description. The record shows that either the Pricing Manager and/or the Product Manager was in charge of the product pricing responsibilities until 2001, when the first Pricing Specialist was hired, and again when the PS position became vacant in 2002. Product Manager Vanessa Nadal testified that she performed the PPS duties until the actual PPS incumbent Madga Morales was hired on April 27, 2004. Morales testified that she learned of this job opening when it was posted externally⁷ for bidding on the Employer's E-center page in March 2004.

Union representative José Kortright testified that the Petitioner became aware of the existence of the PPS classification on or about May 8, 2003 when he received the job description from an anonymous source. However, the record shows that Petitioner was aware of the existence of the PPS classification in or about March 19, 2003, when it requested the PPS job description. Between August 19, 2003 and March 30, 2004, the parties negotiated a collective bargaining agreement that was signed on April 15, 2004 and became effective January 1, 2004 to December 31, 2008⁸. The record also reflects that on August 26, 2003 the Petitioner requested to include this classification in the bargaining unit during the negotiations for the last collective bargaining agreement. The record reflects that while the Petitioner agreed to a collective bargaining agreement on April 15, 2004 that did not include the PPS position, it did so without waiving its right to represent this classification. The record reflects that on September 18, 2003 Petitioner withdrew the position list it had included as part of its proposal for Article 2 unit description, and it notified the Employer in writing that it was reserving its right to claim its representation in the appropriate forum. The instant Petition was filed on September 24, 2004. Afterwards, on September 27, 2004, Petitioner requested the number of employees occupying the PPS classification, request which the Employer complied with on October 4, 2004. The record shows that the next communication between the Union and PRT related to the PPS classification was in February 14, 2005⁹, requesting the PPS classification description of duties.

The Employer presently employs one Price and Product Specialist (PPS) that is responsible for development of projects related to the establishment of prices and administration of the Employer's products in the wireless area, including post and pre-payment, long distance, roaming and data. This position belongs to the Staff operations Department under the Prices and Projections Division. The PPS is supervised by the Manager of the Price and Projections

⁷Morales testified that she started work on June 2, 2003 as a college student intern at the Budget and Results Department at Verizon Wireless and in August of 2003 became a coop student analyst of commissions. She stated that since she was not a PRT employee, she did not have access to the available PPS position information until after it was posted for employee bidding.

⁸This collective bargaining agreement is applicable to PRT as well as Verizon Wireless.

⁹In its Brief, Petitioner argues that the Union requested the CHO and PPS job descriptions on February 14, 2004, but the record shows that the correct year is 2005.

Department, Angel López. There are three other employees under López, two of which are budget analysts and the third employee is a bargaining unit member¹⁰.

The duties of this classification include preparing marketing plans at the beginning of the year, which is then submitted to the Marketing Director and to the Vice-President for Marketing and Sales for final approval. When the Employer knows that it wants to bring a plan to market, the PPS does a financial analysis establishing the fixed and varying costs of the plan, and the minutes it would offer to clients comparing costs to the expected income. The PPS generates a presentation which will describe the reason why the Employer should adopt the plan and the projected income. If the Employer decides to examine a plan in reaction to the competition, the PPS will evaluate if it is economically feasible to offer the same options to its clients. In order to alter or change prices, the PPS prepares a financial analysis and presentation, which is then analyzed and approved by the Marketing Director and the Manager. Once the presentation is approved, the PPS takes the plan personally to the Information Technology Solutions Department (ITS), which, pursuant to the rate creation procedure, then generates the plan in the Employer's billing system. The ITS Department then runs the invoices to verify that the plan is billed correctly. When the Billing Department certifies the invoices, the PPS makes sure that the invoices have been generated correctly, and that they bear the required signatures. As soon as the Billing Department certifies that they are invoicing the plan correctly, then the plan is moved to production, which means that a sales person or coordinator can access that plan. Sales area agents and corporate sales are informed and trained as to the plans that the Employer will be launching. Prior to launching the new plan, the PPS is responsible for training the sales group, generally managers and assistant managers. If a new rate or tariff is created, the PPS is responsible for training the corporate account executives¹¹. The PPS is also involved in marketing projects, such as the USF program that provides a subsidy to wireless clients, and the referrals program which provides incentives to clients who refer new clients. In both projects, the PPS was involved in all phases prior to implementation, including the financial analysis, advertising, and ultimately training the personnel. The record reflects that the PPS salary is in the managerial aqua band.

The Petitioner argues that the PPS position shares a community of interest with, and the duties and responsibilities are similar to, those performed by the Product and Services Administrator, the Tariff and Regulations Analyst, and the Fees and Cost Separation Analyst classifications¹². In summary,

¹⁰According to PPS incumbent Morales, she has not worked in any project with this employee, and only sees him at internal staff meetings.

¹¹The record shows that the corporate account executives are unit employees.

¹²The Petitioner submitted into evidence the job descriptions for the Product and Services Administrator, the Tariff and Regulations Analyst, and the Fees and Cost Separation Analyst classifications. These job descriptions date from 1995, 1989, and 2001 respectively. The parties stipulated that the Fees and Cost Separation Analyst classification is a unit position covered by the Collective Bargaining Agreement.

Petitioner contends that a comparison made between those job descriptions and the PPS job summary indicates that they all share comparable duties and responsibilities. The Employer states that the job descriptions for the above positions are either outdated or have been eliminated.

The record shows that the Product and Services Administrator job description contains 23 essential duties or responsibilities, which, if compared to the PPS job description summary, may appear that they share essential responsibilities, such as the identification of new business opportunities and the necessary resources for the development and implantation of products and services. Nevertheless, the record shows that the PPS incumbent's responsibilities include some managerial duties that are not shared by the Product and Services Administrator classification. For example, the record evidence shows that the PPS incumbent performs pricing work and makes effective recommendations regarding the approval or adjustment of products offered by the Employer. Contrary to the PPS, the Products and Services Administrator job duties only require that the incumbent submit the required information for the establishment of prices to management. In addition, the PPS and Products and Services Administrator differ in that the PPS incumbent, according to the job description, must have knowledge in areas such as sales and marketing, bargaining techniques, analytic and investigative abilities, and must be able to establish sales strategies. In comparing the job description for the Fees and Cost Separation Analyst I-II and the PPS classification job requirement, I note that the later requires one year of experience as an Accountant III or two years experience in Economics, and the PPS classification does not. The Petitioner contends that the job duties for the Tariff and Regulations Analyst III are similar to those of the PPS classification. Nevertheless, in making a comparison between both classifications' job descriptions, I note that that the Tariff and Regulations Analyst III job duties are much more limited in scope than the PPS's duties and responsibilities.

In addition, I note that there is no evidence on record of contact between the employees occupying the Product Services Administrator, Tariff and Regulations and the Fees and Cost Separation Analyst classifications and the PPS position¹³.

V. DISCUSSION

A. **Timeliness**

The Board has found a disputed classification not to be "historically excluded" when the disputed classification was: (1) created midway during the duration of a contract; (2) the union's first opportunity to include the classification

¹³The record evidence submitted was limited to a job description for each of the alleged comparable unit positions. There is no evidence to show if these job descriptions are current, or if there are employees working under those job classifications.

was during the parties' subsequent contract negotiations; and (3) the union unsuccessfully attempted to include the classification into the unit during the negotiations, but reached impasse, and then informed the employer that it would pursue the disputed classifications by way of a unit clarification petition. In these cases, the Board has found that the union has not abandoned its proposal to include the position in the unit in exchange for a concession during bargaining. In these circumstances, the union does not acquiesce in the exclusion of the position from the unit. See, SunarHauserman, 273 NLRB at 1177. The Board generally declines to clarify a bargaining unit midway in the term of an existing collective-bargaining agreement that clearly defines the bargaining unit. Wallace-Murray Corp., 192 NLRB 1090 (1971). To do otherwise, the Board has held, would be unnecessarily disruptive of an established bargaining relationship. San Jose Mercury & San Jose News, 200 NLRB 105 (1972). In some limited circumstances, however, the Board has found the interests of stability are better served by entertaining a unit-clarification petition during the term of a contract. Thus, when the parties cannot agree on whether a disputed classification should be included in the unit but do not wish to press this issue at the expense of reaching an agreement, the Board will entertain a petition filed shortly after the contract is executed, absent an indication that the petitioner abandoned its request in exchange for some concession in negotiations. St. Francis Hospital, Inc., 282 NLRB 950, 951 (1987); WNYS-TV (WIXT), 239 NLRB 170 (1978); Massey –Ferguson, Inc., 202 NLRB 193 (1973).

The record reflects that the Price Specialist position was created on July 2000. Thereafter, on December 12, 2000, it was posted for employee bidding at the Employer's bulletin boards until December 18, 2000¹⁴. Thus Petitioner was unable to bargain about this classification during the negotiations for the October 26, 2000 collective bargaining agreement. Thereafter, in January 2002, the Price Specialist classification became the Price and Products Specialist classification. The record also reflects that the CHO classification was created in or about October 2002, and that the Petitioner became aware of its existence in or about March 2003, when it requested this classification's job description.

Between August 19, 2003 and March 30, 2004, the parties negotiated a collective bargaining agreement that was signed on April 15, 2004, and became effective January 1, 2004 to December 31, 2008. The record also reflects that on August 26, 2003, the Petitioner requested to include the CHO and the PPS classifications in the bargaining unit during the negotiations for the last collective bargaining agreement. The record reflects that the Petitioner agreed to a collective bargaining agreement on April 15, 2004, that did not include these positions, but it did so without waiving its right to represent the CHO and PPS classifications. The record reflects that on September 18, 2003 Petitioner withdrew the position list it had included as part of its proposal for Article 2 unit description, and it notified the Employer in writing that it was reserving its right to

¹⁴The record shows that the Petitioner, HIETEL, has approximately 80 delegates throughout the Employer's facilities.

claim its representation in the appropriate forum. Petitioner subsequently filed the instant Petition to clarify the unit by including both classifications.

In this case, there was no such neglect or abandonment of the Petitioner's request for bargaining to include the CHO and PPS positions into the unit. Petitioner bargained about the inclusion of both classifications in the unit, and in order to facilitate the negotiation process, on September 18, 2003 withdrew its proposal and it advised the Employer that while it was agreeing to a unit description that did not include that classification, it was not waiving its right to pursue the matter further in another forum. Petitioner subsequently filed the instant Petition to clarify the unit by including the PPS and CHO into the unit.

The Employer contends that the Petition is untimely because it was filed 23 weeks after the execution of the April 15, 2005 collective bargaining agreement. In St. Francis, supra, the Board considered timely a petition filed seven weeks after the execution of the collective bargaining agreement since it was filed "shortly after" the contract was executed. In Baltimore Sun Company, 296 NLRB 1023 (1989), the Board held that St. Francis, supra, should not be construed as setting a precise or outer time limit for the filing of UC petitions, and held that a petition filed 11 weeks after the execution of the collective bargaining agreement was considered timely. Although the instant petition was filed approximately 23 weeks after the execution of the contract, in light of all the circumstances, including the lack of evidence that the Employer was disadvantaged by the delay, I conclude that the Petition was timely filed.

Accordingly, as the Petitioner never waived or abandoned its position to include the CHO and PPS classifications in the bargaining unit, the Employer's Motion to Dismiss the Petition is denied.

B. Community of Interest

1. The Credit Handling Officer position

The Petitioner seeks to add the CHO position to its existing unit, while the Employer claims that the position should be excluded because the employees who hold that position are managerial employees who, according to Board policy, should be excluded from the coverage of the Act.

The Employer claims that the CHO position is managerial based on the CHOs discretion in effectuating management policies by expressing and making operative the Employer's decisions. Further, the Employer contends that the CHOs exercise discretion and judgment in matters of financial importance, such as creating payment plans and resolving billing disagreements outside of the parameters imposed by the Employer. Further, the Employer claims that the CHO position is managerial because of their proposal of, participation and

contribution to special projects, such as the invoice consolidation project and the procedures designed for the disconnection of services.

The record evidence shows that the CHO classification embodies functions similar to those of managerial employees. Managerial employees are defined as those employees who “formulate, determine, or effectuate employer policies by expressing and making operative the decisions of their employer.” These employees must exercise discretion within, or even independent of, established employer policy and must be aligned with management. NLRB v. Yeshiva University, 444 U.S. 672 (1980). The evidence reflects that the CHO design collection strategies and then establishes objectives and work plans to improve their area’s performance in order to achieve collection goals. The CHO exercises discretion and independent judgment by approving account adjustments and payment plans outside of the Employer’s guidelines. The record reflects that these decisions are not reviewed or are pre-approved by higher management. Further, the evidence reflects that the CHO take part in and contribute to special projects such as the invoice consolidation project and the procedures established for the disconnection of special data lines. Further, the record reflects that the CHO does assign work to unit employees, has different supervision, work hours, wages and salaries as unit employees.

Accordingly, the unit shall not be accreted to include the CHO position.

2. The Price and Products Specialist position

The Petitioner argues that the PPS position shares a community of interest with, and the duties and responsibilities are similar to, those performed by bargaining unit classifications such as the Product and Services Administrator, the Tariff and Regulations Analyst, and the Fees and Cost Separation Analyst classifications. The Employer claims that the PPS position is managerial and closely aligned with management.

In the instant case, the record evidence fails to establish that the Price and Products Specialist position shares sufficient terms and conditions of employment in common with unit members, to create a community of interest with them. Whether the rates of pay or salaries and benefits received by the unit members in the above classifications and the PPS are comparable are not known since the form and extent of the remuneration of the alleged comparable unit positions is not known. Nor does the record reflect the working conditions, working locations or supervision of the unit employees in the allegedly similar classifications. Therefore, a comparison of work hours and the extent of contact between the PPS and the unit members can not be determined. The record shows that one unit employee and the PPS are supervised by the Price and Projections Department Manager, thus sharing common supervision. In addition, the record shows that the PPS is responsible for training unit members once a

new price plan is approved; these common characteristics however, are insufficient to conclude that there is a community of interest with unit members.

The Employer also argues that the PPS position is managerial. As previously discussed, such employees are defined as employees who “formulate, determine, or effectuate employer policies by expressing and making operative the decisions of their employer.” These employees must exercise discretion within, or even independent of, established employer policy and must be aligned with management, and that they must represent management interests by taking or recommending discretionary actions that effectively control or implement employer policy.” NLRB v. Yeshiva University, supra, NLRB v. Bell Aerospace Co., 416 US 267 (1974).

As stated above, the PPS duties consist on analyzing prices with the different Employer products in the wireless area, including post and pre-payment, long distance, roaming and data. In order to establish prices, the PPS prepares a yearly marketing plan based on the PPS judgment of the behavior of the wireless client base of the Employer and the competition. The record shows that once the analysis is prepared, her recommendations are then presented to higher management for interchange of opinions, discussion and approval. The record shows, however, that the PPS uses her own judgment, based on her financial analysis, to implement price reductions. In so doing, she does not seek or require prior approval from higher management. Thus, the evidence reflects that the PPS executes Employer policies governing the prices and promotion of Employer products. Even though the PPS recommendations are presented and subject to approval, it is reasonable to conclude that even if such individual does not meet the strict definition of a “managerial” employee within the Act, she does identify with other individuals in management positions rather than rank and file employees. Thus, even if the PPS is not a managerial employee, her functions more closely align her with management than unit members.

Accordingly, I conclude that as the PPS position lacks a community of interest with unit members, the unit shall not be accreted to include the PPS position.

VI. ORDER

Based upon the above findings of fact and conclusions of law, IT IS HEREBY ORDERED that:

- a. The Employer’s motion to dismiss the petition with respect to the Credit Handling Officer is granted and,
- b. The Employer’s motion to dismiss the petition regarding the Price and Products Specialist position is granted.

VII. RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, NW, Washington, D.C. 20570. This request must be received by the Board in Washington by May 23, 2006.

Dated at San Juan, Puerto Rico, this 9th day of May 2006.

/s/

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